



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 3, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Sam Brownback
Hart Senate Office Bldg.
Washington, D.C. 20510

RE: MUR 4736
The Honorable Sam Brownback

Dear Senator Brownback:

As part of its consideration of Matter Under Review ("MUR") 4736, the Federal Election Commission ("the Commission") has found reason to believe that you violated 2 U.S.C. § 441a(f), § 441b and § 441f, which are provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed the basis for the Commission's finding, is attached for your information.

The facts underlying the Commission's findings in MUR 4736 are virtually identical to the basis for the Commission's June 1998 findings against you in MURs 4568, 4633 and 4634. Due to the related nature of these MURs, the Commission has decided to investigate MUR 4736 concurrently with its investigation in MURs 4568, 4633 and 4634. Future communications regarding this MUR will refer to MURs 4568, 4633, 4634 and 4736 as being part of a single investigation.

For your information, this Office has considered and will treat your responses and submissions in MURs 4568, 4633 and 4634 as if they also had been filed in MUR 4736. You also may submit additional factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such additional materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending that pre-probable cause conciliation not be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Mark Shonkwiler or Marianne Abely at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures:

Factual and Legal Analysis
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: The Honorable Sam Brownback

MUR: 4736

I. GENERATION OF THE MATTERS

The respondent was added to MUR 4736, which relates to the involvement of Triad Management Services, Inc. ("Triad") in various 1996 congressional elections, on the basis of information ascertained by the Commission in the normal course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

The Commission currently is investigating similar allegations as part of an ongoing investigation in MURs 4568, 4633 and 4634. The Commission determined that it will investigate MUR 4736 jointly with MURs 4568, 4633 and MUR 4634.

II. FACTUAL AND LEGAL ANALYSIS

During the latter part of 1996 and throughout 1997, there were a number of press accounts concerning the activities of Triad and two non-profit groups, Citizens for Reform ("CR") and Citizens for the Republic Education Fund ("CREF"), with which it appears that Triad worked in connection with the 1996 federal elections. In summary, it was reported that during both the primary and general elections, Triad came to the aid of a substantial number of Republican congressional campaigns (more than twenty-five), including Sam Brownback's campaign for the US Senate, after learning of their needs through a process it referred to as a "political audit."

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The assistance that was reportedly provided by Triad, CR and CREF came in several different forms. First, Triad is reported to have controlled the efforts of CR and CREF in raising funds for, as well as producing and broadcasting, over \$3 million worth of political advertising during the weeks prior to the 1996 federal elections in what appears to have been an effort to influence the outcome of certain elections. It has been reported that at least some of these advertisements were coordinated with particular congressional campaigns. Second, Triad reportedly communicated the results of its political audits, along with solicitations for contributions to specific campaigns, to wealthy individuals who received periodic "Triad Fax Alerts" and may have forwarded contributions from these individuals to different campaign committees. Third, Triad reportedly set up a plan to arrange contributions from individuals, who already had made the maximum legal contribution to certain congressional candidates, to various political action committees ("PACs"). These PACs reportedly then gave identical or nearly identical amounts back to the original contributor's preferred candidate. Finally, Triad reportedly provided free consulting services to various congressional campaign committees while conducting political audits.

If true, the allegations summarized above suggest that there may have been a pattern of activity on the part of Triad, CR and CREF which may have had the effect of circumventing the registration and reporting requirements, as well as the contribution prohibitions and contribution limitations, established by the Federal Election Campaign Act of 1971, as amended, ("the Act"). In connection with this activity, it appears that Sam Brownback may have received either excessive or prohibited contributions.

A. THE APPLICABLE LAW

The Act, provides that no person, including a political committee, may contribute more than \$1,000 per election to any candidate for federal office or his authorized committee. 2 U.S.C. § 441a(a)(1). The Act also limits to \$5,000 the amount that a qualified multicandidate committee may contribute to a candidate or their authorized committee.¹

For the purposes of the Act, "expenditures made by any person in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered a contribution to such candidate." 2 U.S.C. § 441a(a)(7). The Commission has ruled that expenditures for communications which favorably discuss candidates in an election-related context and are coordinated with such candidates constitute in-kind contributions to the candidates. *See* Advisory Opinion 1988-22.

The Act also prohibits a contributor from attempting to hide a contribution to a candidate or committee by making the contribution in the name of another person. 2 U.S.C. § 441f. Specifically, the Act prohibits (1) making a contribution in the name of another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. *Id.* In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 2 U.S.C. § 441f, 11 C.F.R. § 110.4(b)(1)(iii).

¹ A multicandidate committee is a committee which has been registered with the Commission for at least six months, has received contributions from more than 50 persons, and has made contributions to five or more candidates for federal office. 2 U.S.C. § 441a(a)(4).

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11 C.F.R. § 110.1(h), entitled "*Contributions to committees supporting the same candidate,*" provides that:

A person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting the same candidate in the same election, as long as -

(1) The political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee;

(2) The contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and

(3) The contributor does not retain control over the funds.

The Act further provides that a candidate or his authorized committee may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

Notwithstanding certain narrow exceptions, the Act prohibits corporations from making contributions in connection with any election.² 2 U.S.C. § 441b(a). Similarly, candidates and political committees are prohibited from accepting corporate contributions, including expenditures attributable as in-kind contributions, in connection with any election. 2 U.S.C. § 441b(a).

² Corporations are prohibited from making "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money or any services, or anything of value (except a loan of money by a bank in accordance with applicable laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any federal election." 2 U.S.C. § 441b(b)(2).

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Corporations also are prohibited from “facilitating the making of contributions” to candidates or political committees. 11 C.F.R. § 114.2(f). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any federal election. *Id.* In this same context, a candidate, political action committee or other person is prohibited from knowingly accepting or receiving any prohibited contribution made or facilitated by a corporation. 11 C.F.R. § 114.2(d).

B. FACTS

1. Triad, CR and CREF

Triad, CR and CREF all appear to have been created during the 1996 election cycle. Triad reportedly was founded by Carolyn Malenick, who previously had worked as a fund-raiser for various political groups and campaigns, including, *inter alia*, Oliver North’s 1994 bid for the US Senate. At different times, Ms. Malenick reportedly has described herself as the President and Chief Executive Officer of Triad; the Director of Triad; and the Chief Operating Officer of Triad. *See, e.g.*, 11/19/97 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Triad advertises itself as a political consulting firm that provides services to donors interested in making political contributions to conservative candidates, campaigns, issues and projects. Triad attempts to distinguish itself from other political consulting firms by claiming that it only works for donors, not for candidates or campaigns. *Id.*

Press accounts indicate that Triad representatives have described the company as operating in a manner akin to a stock brokerage for conservative political donors, providing research and analysis of upcoming elections, and dispensing advice on how to maximize the impact of political contributions. *See* 9/28/96 National Journal article. In

sum, Triad reportedly seeks to give wealthy contributors advice on how to get the "biggest bang for the buck" with their contributions by telling them which conservative candidates look like winners and which ones need help. *Id.*

CR and CREF reportedly were founded in mid-1996. *See* 10/29/97 Minneapolis Star-Tribune article. Both groups are reported to initially have represented themselves as non-profit corporations formed under the social welfare organization provisions of 26 U.S.C. § 501(c)(4). *See* 10/24/97 Denver Post article. A newspaper article stated that CR's application for non-profit tax status was granted, but that CREF never made the necessary filings with the IRS. *Id.* In late 1997, both groups reportedly took action to change their tax status to that of political organizations under 26 U.S.C. § 527. *Id.*

Although CR and CREF purport to have been founded by Peter Flaherty and Lyn Nofziger respectively, it has been widely reported that CR and CREF are run by Triad. *See, e.g.,* 10/29/97 Minneapolis Star-Tribune article; and 10/8/97 The Hill article. For example, reports of interviews by Mr. Nofziger have stated that Ms. Malenick approached him to be the titular head of CREF, and that he had virtually nothing to do with the CREF political advertising campaigns. *See* Online U.S. News article; 5/5/97 Los Angeles Times article. Indeed, Ms. Malenick responded to news reports regarding Triad's alleged control of CR and CREF by acknowledging that Triad had "management contracts" to run various CR and CREF projects. *See* November 19, 1997 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Further indications of Triad's apparent control of CR and CREF can be found in documents attached as exhibits to the Final Report on Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns by the Senate Committee

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on Governmental Affairs ("Senate Report"). These include what appear to be the "management contracts" to which Ms. Malenick referred. These contracts appear to reflect complete control by Triad over the execution of the CR and CREF "public education program[s]." See 9/26/96 Triad Consulting Agreements with CR and CREF (stating that "TRIAD shall be free to decide the means by which it will provide the Services").

Another exhibit appears to reflect that almost immediately after CREF's formation in June 1996, Ms. Malenick was appointed the President of CREF, and that two other Triad employees were appointed as CREF's secretary and treasurer. See Unanimous Written Consent In Lieu of the Organizational Meeting of the Board of Directors of the Citizens for the Republic Education Committee.³

To date, neither the press reports nor any other information received by the Commission in connection with these matters reflect any activity by CR or CREF other than the advertising aired by these two organizations during the last few weeks prior to the 1996 federal elections. One newspaper account reported that a Triad spokesman stated that the CR and CREF ad campaigns were intended as a direct response to the AFL-CIO's "issue ad" campaigns in the districts of vulnerable Republican candidates. See 10/29/97 Minneapolis Star-Tribune article. The Triad spokesman also is reported to

³ Although the document appointing Ms. Malenick as President of CREF is undated, it utilizes the group's original name of "Citizens for the Republic Education Committee", which was changed to "Citizens for the Republic Education Fund" on or about July 12, 1996. See 7/12/96 Unanimous Written Consent In Lieu of a Special Meeting of the Board of Directors of the Citizens for the Republic Education Committee.

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have said that “[i]f there had been no AFL-CIO campaign, there would have been no Citizens for the Republic Education Fund issue campaign.” *Id.*

2. Triad’s Political Audits

At least one news account has reported that Triad personnel and consultants performed what Triad labeled as “political audits” on approximately 250 campaigns during the 1996 election cycle. See 10/29/97 Minneapolis Star-Tribune article. This news account also reported that a Triad spokesperson described the purpose of these political audits, many of which reportedly included meetings with the candidate or senior campaign officials, as the identification of “races where donors could support candidates who shared their ideological views and had a viable campaign.” *Id.*

The political audit reports released as exhibits to the Senate Report suggest that Triad conducted a standardized review of congressional campaigns. The first point reflected in many of these audit reports was a date on which a Triad representative met with someone from the campaign to obtain the information contained in the audit. Most of the audit reports included as Exhibits to the Senate Report follow a standard format discussing some or all of the topics listed below.

FORMAT OF TRIAD “POLITICAL AUDIT” REPORT

- I. Finances - (assessment of planned expenditures, current cash-on-hand and possible fundraising shortfalls)
- II. Polling - (review of polling trends in race)
- III. Key Issues - (list of issues considered critical to the campaign’s success)
- IV. Needs - (campaign’s self-identification of specific nonmonetary needs; e.g., big name speaker to attract supporters to rally)

<u>General Observations</u>	(Comments on campaign organizations)
<u>Good Points about Campaign</u> -	(Subjective analysis of strengths)
<u>Bad Points about Campaign</u> -	(Subjective analysis of weaknesses)
<u>Prospect for Victory</u> -	(Assessment of Candidate's Chance to Win)
<u>Action</u> -	(Follow-up Actions for Triad personnel)
<u>Conclusion</u>	(Recommendation on support for campaign)

See, e.g., Triad political audit reports attached to Senate Report.

Indeed, it appears that as part of these audits, Triad met with representatives from each of the campaigns specifically addressed by the MURs, including Sam Brownback, to discuss the specific strengths and weaknesses of their campaign, and to learn what help the campaign needed to successfully compete in the upcoming election. *See* Triad Audit Reports. Information obtained by the Commission, including the audit reports, suggests that in some instances, after completing an audit, Triad may have had ongoing contacts with some campaigns to assess the developing prospects and needs.

After completing its political audit on a candidate, such as Sam Brownback, Triad reportedly provided the results of its research and analysis to prospective political donors. It appears that rather than waiting for donors to make specific requests for information about a particular campaign, Triad periodically sent general "Fax Alerts" to prospective donors which extolled the virtues of various campaigns and provided Triad's recommendations for political contributions. Based on documents attached as exhibits to the Senate Report, it appears that Triad sent no fewer than sixty (60) separate fax alerts between February and December 1996. *See* Triad Fax Alert Index. Further, while the

Commission currently lacks information as to how many potential contributors received each Triad Fax Alert, one of the fax alerts in the middle of the known range (No. 28 out of 60) notes that "over 160 businessmen and women have been added to the Fax Alert in the last 18 months." See 10/10/96 Triad Fax Alert titled "Countdown to Election Day: 27 Days."

As discussed below, Triad appears to have used the information derived from its "political audits" in a number of different ways that may have resulted in excessive, prohibited and/or unreported in-kind contributions to the Sam Brownback for US Senate Committee (the "Brownback Committee").

a. Advertising Campaigns

It appears that, on at least some occasions, Triad used the knowledge of the needs of specific congressional campaigns gained through its political audits in managing a number of political advertising campaigns sponsored by CR and CREF. Indeed, documents attached to the Senate report suggest that Triad solicited donors to provide financial support for the CR and CREF campaigns with explicit representations that such advertisements would help re-elect candidates whose needs had been reviewed in a Triad audit report. Further, it appears that Triad may have used information obtained in the political audits to select some, if not all, of the congressional districts in which advertisements were run; and to select some, if not all, of the issues raised in CR and CREF advertisements.

During the latter half of 1996, Triad began to solicit prospective contributors for money to fund the advertising campaigns by what it described as 501(c)(4) social welfare organizations for the stated purpose of countering organized labor's efforts to defeat

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various Republican candidates. *See* 9/27/96 and 10/24/96 Triad Fax Alerts. Specifically, Triad sent Fax Alerts to an unidentified number of potential contributors informing them of the opportunity to fund last minute CR and CREF advertising campaigns designed to help Republican candidates whose election or re-election was purportedly endangered by organized labor spending.⁴

For example, in one of its Fax Alerts, Triad states that the "the left has wasted their resources by buying Christmas cards in July" while Triad has conserved its resources so that CR and CREF "can begin the fall harvest." Triad Fax Alert, dated 9/27/96. (emphasis in original). As part of an effort to convince contributors that it is not too late for the CR and CREF efforts to effectively counter union-sponsored advertisements, Triad reminds readers of the Fax Alert that "[p]eople do not start focusing attention on the General Elections until the political season begins following Labor Day which has come and gone." *Id.* (emphasis added).

Based on documents attached to the Senate Report, it appears that CR and CREF spent approximately \$3 million on political advertising campaigns that may have been intended to influence what has been reported as somewhere between twenty-six (26) and thirty-four (34) House and Senate races. *See* 10/29/97 Minneapolis Star-Tribune article; 10/29/97 Wall Street Journal article; and 10/30/97 Washington Post article. *See also*, undated Exhibit to Senate report summarizing twenty-six races in which CR and CREF reportedly sponsored political advertising. In different congressional districts, the CR

⁴ A 10/7/96 Triad Fax Alert states that corporate contributions are accepted and welcome; and that there is no limit on the amount that an individual or corporation can contribute to a 501c(4) organization. *See* 10/7/96 Triad Fax Alert.

and CREF advertising campaigns reportedly included (in order of frequency) television, radio, direct mail and phone bank efforts. *Id.*

One reported example of Triad-managed political advertising in the weeks just before the 1996 election involves a CREF advertising campaign which praised Republican Sam Brownback and criticized his opponent, Democratic candidate Jill Docking. CREF reportedly spent \$410,000 on pro-Brownback/anti-Docking advertisements. See 12/12/97 Washington Post article; and 12/5/97 Kansas City Star article. The documents released as exhibits to the Senate Report indicate that Senator Brownback's campaign also was one of the campaigns on which Triad performed a political audit. See Brownback Audit Report.

b. Fundraising Efforts

It appears from the text of the audits attached as exhibits to the Senate report and from examples of the solicitations set forth in what Triad called "Fax Alerts," that the audits were also a source of information based on which Triad decided where to focus its fundraising resources. The Triad Fax Alerts urge the recipients to make contributions and otherwise support various Triad-recommended candidates in both the primary and general elections. See Triad Fax Alerts attached to Senate Report. Sam Brownback's candidacy for the US Senate is mentioned in several of the Triad Fax Alerts.

The Triad Fax Alerts urge the recipients to make contributions and otherwise support various Triad-recommended candidates in both the primary and general elections. One example of a Triad recommendation in a primary election is the following statement regarding Sam Brownback's candidacy:

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The rapidly approaching August 6th primary is a microcosm of the ideological battle to maintain the Republican Revolution. The liberals are represented by Governor Bill Graves (R - Kansas) temporary appointee, former Lieutenant Governor and current U.S. Senator Sheila Frahm (R - Kansas). The conservative standard bearer and the TRIAD recommended candidate is freshman Congressman Sam Brownback (R - Topeka).

The campaign to replace Dole is our best opportunity to send a message to the liberals who would weaken the principles upon which the Republican Party is based. The election of Brownback will send shockwaves throughout the Republican National Convention scheduled one week later. Sheila Frahm must be defeated !

Triad Fax Alert titled "96 Primary Election Alert - July 18, 1996."

In a subsequent Fax Alert, after the primary described above, Triad noted:

In Kansas, America's heartland, we count a Senate victory in Representative Sam Brownback's defeat of recently appointed, liberal Sheila Frahm. The final totals 55% to 42%. Congressman Sam Brownback had this to say, "I cannot even begin to thank TRIAD enough for its help in my Senate campaign. TRIAD played an essential role in my effort to educate voters about my conservative message and ideas for restoring the American dream."

Triad Fax Alert titled "96 Primary Election Results - August 7, 1996."

Other Triad Fax Alerts contain similar statements designed to encourage donors to make contributions to specific candidates. See other Triad Fax Alerts attached as exhibits to Senate Report.

Some of the audit reports refer to what appears to have been a practice Triad had of soliciting donors who already had made the maximum legal contribution to particular candidates Triad was seeking to support. It has been alleged, and some of the audit reports seem to indicate, that Triad may have tried to interest such donors in making

contributions to certain selected political action committees ("PACs"), which made subsequent, and often identical, contributions to the original donor's preferred candidate(s).⁵

For example, an excerpt from the Triad audit report of the campaign of Pete Sessions, which is attached to the Senate Minority report, states: "Both Sessions and [the campaign manager] clearly understand the Triad concept and will have a list of their maxed out donors for our inspection as soon as there is a call from Washington." See excerpt from Pete Sessions audit report. Another audit report states that "Ed Merritt has a number of maxed out donors who might want to be introduced to Triad. Towards that end, I have recommended over the telephone to [a Triad employee] that we check out their receptance." See Ed Merritt audit report. In what appears to be reference to the same practice, the Triad audit report on the Sam Brownback for US Senate campaign, notes that Triad will "[n]eed to work with potential clients that may be recommended by the Brownback campaign and with the finance chairman to ensure that Triad is properly advertised." See Brownback audit report.

In this context, John and Ruth Stauffer ("the Stauffers"), the father-in-law and mother-in-law of Sam Brownback who had made the maximum legal contribution to Sam Brownback for US Senate, made \$32,500 in contributions to seven political action

⁵ It has been reported that Ms. Malenick acknowledged that Triad would try and match donors referred to it by a candidate to PACs who were likely to support the same candidate, but denied that there was any coordination between the individual contribution to the PACs and the PAC contributions to the candidate. See October 8, 1997 Article in The Hill. Triad's advertisements seem to hint at this by stating that its "services to clients" include "[w]orking with conservative political action committees and issue organizations for efforts to maximize their separate funding sources to accomplish common objectives."

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committees, which within a short time, made identical or nearly identical contributions to the Brownback Committee.

Name of PAC	Date ⁶ of Stauffers' Contribution	Amount of Stauffers' Contribution	Date of PAC Contribution to Brownback	Amount of PAC Contribution to Brownback
American Free Enterprise PAC	7/19/96	\$5000	7/12/96 7/29/96	\$1000 \$3500
Citizens United Political Victory Fund	7/05/96	\$5000	7/18/96	\$5000
Conservative Victory Committee	7/12/96	\$5000	6/28/96 7/16/96 7/22/96 10/17/96	\$500 \$1000 \$2000 \$1000
Eagle Forum PAC	7/10/96	\$5000	7/02/96 9/11/96 10/11/96 10/25/96	\$4000 \$1000 \$1000 \$1000
Faith, Family & Freedom	7/26/96	\$2500	6/26/96 7/29/96	\$1000 \$4000
Free Congress PAC	7/16/96	\$5000	7/16/96	\$4500
The Madison Project	7/29/96	\$5000	7/31/96	\$5000

c) Consulting Assistance to Campaigns

In addition to the questions raised with regard to whether the political audits were used to help direct contributions, documents attached as exhibits to the Senate Report

⁶ The reported date of the contribution is based on the date of receipt reported by the PACs in their FEC reports.

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suggest that Triad's political audit process was used to provide other assistance to specific congressional campaigns both during and after the audit. The text of some of the Triad audit reports, most of which were written by an experienced political consultant named Carlos Rodriguez, suggest that Triad personnel may have provided uncompensated consulting services to various congressional campaigns as part of the Triad audit process.⁷

Additional questions regarding Triad consulting assistance stem from news reports stating that, on at least two occasions, Triad's Finance Director, Meredith O'Rourke met with Sam Brownback to provide training and assist him in making fundraising telephone calls. See 12/12/97 Washington Post article and 12/5/97 Kansas City Star article.

⁷ One example of possible Triad consulting assistance can be found in an audit report where Mr. Rodriguez notes that he spent several hours visiting with a congressional campaign staff, and convinced them to expand their budget to hire a professional phone bank, something which represented a change in their plans. See Jay Mathis audit report. In another audit report, Mr. Rodriguez states that he gave a congressional campaign "a plan to work out with regards to fundraising, establishing specific financial goals and programs to achieve those objectives." See Vince Snowbarger audit report. With regard to a different campaign, Mr. Rodriguez wrote that "I have suggested to [the congressional candidate] specific steps that need to be taken regarding his fundraising. I have asked the campaign chairman to inform me if [the congressional candidate] does what he has been told he needs to do." See Christian Leinbach audit report. Similarly, in yet another audit report, Mr. Rodriguez gave himself an action item to "call within the next week to 10 days to make sure that [the congressional candidate] is following the advice we gave him with regards to fundraising techniques." See Bob Kilbanks audit report. Finally, several audit reports suggest that Mr. Rodriguez recommended consultants and vendors to campaigns which needed assistance in a particular area of expertise. See e.g., Jim Ryun audit report, Mark Sharpe audit report, and Steve Stockman audit report.

3. Triad's Service as a Conduit for Contributions

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A final component of Triad's service to various congressional campaigns appears to involve assisting an unspecified portion of the donors it solicited in physically forwarding their contribution checks to the recipient campaign or organization. Indeed, Triad often concluded its Fax Alerts with the recommendations that recipients "[i]mmediately contact the TRIAD office so we know when to expect your checks and the amounts you will contribute. Because each race has unique dynamics, please contact TRIAD before determining which races to support. . . . PLEASE MAIL ALL CHECKS TO THE TRIAD OFFICES." See Triad Fax Alert titled "96 Primary Election Alert - July 18, 1996."

The Commission has information indicating that one of the PACs which received a contribution from the Stauffers reported receiving the check in an envelope with Triad listed as the return address. This suggests that Triad was involved in forwarding some, if not all, of the \$32,500 in checks that the Stauffers sent to the seven different PACs, which made subsequent contributions to the Brownback campaign.

In addition to forwarding checks from contributors to PACs, Triad also appears to have forwarded checks from PACs to campaign committees. For example, the Commission has information indicating that one PAC which reported receiving a contribution from the Stauffers, also reported sending a subsequent contribution to the Sam Brownback for US Senate committee "c/o Triad Management Services, Inc." See 10/17/96 Disclosure Report of Free Congress PAC.

C. ANALYSIS

Given the allegations and information in each complaint, response, and additional information from public sources, the Commission has made findings against Sam Brownback under two alternative theories regarding the status of Triad; one as a political committee which may have made excessive contributions in violation of 2 U.S.C. § 441a(a)(1); and the other as a corporation which may have made prohibited expenditures and contributions in violation of 2 U.S.C. § 441b.

1. Theory One: Triad and CREF as Political Committees

From the information the Commission has obtained to date, it appears that Triad and CREF made coordinated expenditures both in connection with Triad's fundraising efforts, Triad's consulting efforts and CREF's pro-Brownback/anti-Docking advertising campaign during the 1996 election cycle which constitute in-kind contributions to Sam Brownback and that these in-kind contributions may have exceeded the \$1000 per election limit imposed by the Act. 2 U.S.C. § 441a(a)(7) and § 441a(a)(1)(a).⁸

The information available to date appears to raise questions as to whether Sam Brownback accepted excessive contributions from Triad and CREF in the form of the Triad fundraising efforts (including the Triad Fax Alerts), Triad consulting advice and the CREF pro-Brownback/anti-Docking advertising campaign, all of which appear to have been coordinated expenditures based on information learned through Triad's "political audit" of the Sam Brownback's candidacy. 2 U.S.C. § 441a(a)(7). Given what is known

⁸ Because Triad and CREF never registered with the Commission as a political committee or committees, they do not meet the requirements to qualify as a multicandidate committee which can make contributions of up to \$5000. 2 U.S.C. § 441a(a)(2).

about the costs associated with these efforts, the available information suggests that if Triad and/or CREF is a political committee, Sam Brownback may have accepted, and failed to report, in-kind contributions which exceeded the \$1000 limit established by the Act. 2 U.S.C. § 441a(f).

2. Theory Two: Corporate Contributions

If Triad and CREF ultimately are not found to be political committee(s), the available information suggests that Triad, CR and Carolyn Malenick, as the principal officer of Triad, either made or facilitated prohibited corporate contributions to various beneficiary candidates, including Sam Brownback, in violation of 2 U.S.C. § 441b.

The information currently available also raises questions as to whether Sam Brownback accepted contributions that were facilitated by Triad using its corporate resources in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f). Corporations are prohibited from using their resources or facilities to engage in fundraising activities in connection with any federal election, other than specific exceptions made for separate segregated funds which do not apply in this case.⁹ 11 C.F.R. § 114.2(f)(1).

The available information suggests that Sam Brownback may have accepted in-kind contributions from Triad and other contributions that were facilitated by Triad.

⁹ Examples of prohibited corporate facilitation include ordering or directing subordinates to plan, organize or carry out fundraising projects as part of their work responsibilities using corporate resources unless the corporation receives advance payment for the fair market value of such services. 11 C.F.R. § 114.2(f)(2)(i)(A). Another example of prohibited facilitation is to use a corporate list of customers, clients or vendors to solicit contributions, unless the corporation receives advance payment for the fair market value of the list. 11 C.F.R. § 114.2(f)(2)(i)(C). A third example of prohibited corporate facilitation is to collect and forward contributions earmarked for a candidate, unless such activity is conducted by a separate segregated fund. 11 C.F.R. § 114.2(f); § 114.2(f)(3).

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First, the Triad Fax Alerts appear to represent a fundraising effort designed to help different candidates for federal office that was planned, organized and carried out by Triad's employees, apparently at the direction of Triad management, and with corporate resources for which Triad apparently did not receive advance payment. Second, Triad sent fundraising solicitations for specific candidates named in the Triad Fax Alerts to a list of its clients without receiving advance payment for the use of that list. Finally, Triad may have acted as a corporate conduit by collecting and forwarding checks for different candidates mentioned in its Fax Alerts.¹⁰

The information available to date appears to raise questions as to whether Sam Brownback accepted prohibited corporate contributions or facilitation in connection with the Triad fundraising efforts (including the Triad Fax Alerts), Triad consulting advice and the CREF pro-Brownback/anti-Docking advertising campaign, all of which appear to have been coordinated expenditures based on information learned through Triad's "political audit" of the Sam Brownback's candidacy. 2 U.S.C. § 441a(a)(7).

¹⁰ The current record does not contain evidence that Triad received compensation for the services it provided in connection with each campaign, much less compensation equivalent to the normal and usual charge for such services. Triad suggests that it is exempt from the prohibition on acting as a conduit, because it was acting as an agent of the donor. The Commission believes that Triad's position is incorrect as a matter of law. The exemptions to the definition of the term "conduit or intermediary" provided for agents is limited to persons or entities that represent a recipient organization, and do not apply to groups purporting to represent a donor. See 11 C.F.R. § 110.6(b)(2)(i).

**3. Indirect Contributions from Contributors Who Already
Had Made the Maximum Legal Contribution to a Committee**

28044200540

The information currently available suggests that Triad may have been engaged in a pattern of activity through which it would encourage individual donors who had made the maximum contribution to a particular candidate to make contributions to political action committees which would then make identical or nearly identical contributions to the original donor's preferred candidate. The complaint in MUR 4634 appears to present an example of such a pattern of activity. This pattern of activity raises the possibility of violations of the Act by both Triad and other participants.

The available information raises questions as to whether some or all of these contributions, when funneled through a Triad-selected PAC, may constitute contributions made in the name of another person (the PACs) in violation of 2 U.S.C. § 441f. The available information also raises questions as to whether some or all of the contributions from the PACs were attributable to the original donor under 11 C.F.R. § 110.1(h), and thus constitute excessive contributions in violation of 2 U.S.C. § 441a(a)(1).

Some of the reasons for believing that the PAC contributions by the Stauffers may have constituted contributions in the name of another person can be summarized as follows. As noted above, documents attached as exhibits to the Senate Report appear to indicate that Triad had a practice of asking campaigns that Triad decided to support for lists of their "maxed out" donors. At this time, there is no other explanation for the proximity in timing and similarity in amounts between the contributions to the PACs and the subsequent PAC contributions to the Brownback Committee. In addition, the Stauffers had no prior history of contributing to the PACs involved in this alleged

28044200541

scheme, and all of the PACs that received contributions from the Stauffers subsequently contributed to the Brownback Committee. Finally, while the Stauffers could have contributed up to \$5000 apiece to each PAC (for an aggregate contribution of \$10,000), they limited their total aggregate contribution to each PAC to \$5000, an amount equivalent to the maximum amount that the recipient PACs could contribute to the Brownback Committee.

Notwithstanding conclusory denials from various respondents, and for the reasons stated above, the Commission believes that there are substantial unanswered questions regarding these contributions. It appears, however, that Triad may have had communications with both the contributors (the Stauffers) and with the PACs to which they contributed. Such communications would have created an opportunity for the PACs to have agreed to make a contribution to a Triad-recommended campaign (Sam Brownback for US Senate) in an amount identical to, or nearly identical to, the contributions that they received from a Triad client (the Stauffers).¹¹

4. Conclusions

The available information suggests that Sam Brownback may have been personally involved in accepting what can alternatively be characterized as excessive in-kind contributions or prohibited corporate contributions from Triad and CREF. The available information also suggests that that Sam Brownback may have been personally involved in accepting indirect contributions from the Stauffers, which alternatively can be

¹¹ The fact that all of the PACs involved in the communications subsequently did make identical, or nearly identical, contributions to the Triad-recommended political committees raises further questions about whether there was an agreement to make contributions in the name of another person.

characterized as contributions made in the name of another or as excessive indirect contributions.

A. In-Kind Assistance

The available information suggests that Sam Brownback accepted fundraising assistance from Triad and also accepted what appears to have been coordinated expenditures (and thus in-kind contributions) from Triad and CREF as a result of the pro-Brownback/anti-Docking advertising campaign. Thus, Sam Brownback appears to have violated the Act by accepting what can alternatively be characterized as excessive in-kind contributions or prohibited corporate contributions from Triad and CREF.

If Triad is found to be a political committee, and based on the likelihood that Triad's fundraising assistance, including solicitations to prospective donors and the services provided by Ms. O'Rourke, might be valued at more than \$1000, Sam Brownback may have violated 2 U.S.C. § 441a(f) by accepting excessive contributions might be valued at more than \$1000.

Under the alternative theory, Triad may have made prohibited corporate contributions to benefit Sam Brownback's candidacy. By accepting such corporate contributions, Sam Brownback may have violated 2 U.S.C. § 441b by accepting prohibited corporate contributions from Triad and CREF.

The current record also suggests that CREF's pro-Brownback/anti-Docking advertising campaign was a coordinated expenditure that resulted from information that Sam Brownback or his representatives provided to Triad during the "political audit" of his campaign. Further, given the likelihood that the CREF ad campaign cost more than \$1000, the ad campaign may constitute an excessive in-kind contribution, which the Sam

28044200543

Brownback accepted in possible violation 2 U.S.C. § 441a(f). Further, if Triad and CREF made prohibited corporate contributions, Sam Brownback may have accepted a prohibited corporate contribution in violation of 2 U.S.C. § 441b.

For the reasons set forth above, the Commission finds reason to believe that Sam Brownback violated 2 U.S.C. § 441a(f) by accepting excessive contributions; and under the alternative theory, violated 2 U.S.C. § 441b by accepting prohibited corporate contributions.

B. Indirect Contributions from the Stauffers

For the reasons set forth above, the Commission finds reason to believe that Sam Brownback violated 2 U.S.C. § 441f by accepting contributions from the Stauffers, that were made in the name of another person (the PACs).

Under the alternative theory that the PAC contributions to the Brownback Committee were attributable to the Stauffers under 11 C.F.R. § 110.1(h), the Commission finds reason to believe that Sam Brownback violated 2 U.S.C. § 441a(f) by failing to accurately report and by accepting excessive contributions from the Stauffers.